

of hate crimes. It is a blot on our constitutional understanding of what democracy is all about, and it is so important that today we debate and pass finally the hate crimes law that has been here and approved in three different Congresses.

Mr. Speaker, I reserve the balance of my time.

Mr. SMITH of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I oppose this bill, H.R. 1592, for three reasons. First, the bill will result in disproportionate justice for crime victims who do not fall within the categories it contains. Second, it will have a chilling effect on religious freedom and first amendment rights. And third, it is probably unconstitutional and raises significant Federalism issues.

We can all agree that every violent crime is deplorable, regardless of its motivation. Every violent crime can be devastating not only to the victim, but also to the larger community whose public safety has been violated. That is why all violent crimes must be vigorously prosecuted. However, this bill, no matter how well intended, undermines basic principles of our criminal justice system.

Our criminal justice system has been built on the ideal of equal justice for all. Under this bill, justice will no longer be equal, but depend on the race, sex, sexual orientation, disability or status of the victim. It will allow different penalties to be imposed for the same crime. For example, criminals who kill a homosexual or transsexual will be punished more harshly than criminals who kill a police officer, a member of the military, a child, a senior citizen or any other person.

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To me, all victims should have equal worth in the eyes of the law. In fact, in 1984, Congress, in a bipartisan manner, enacted the Sentencing Reform Act to ensure the consistent application of criminal penalties to avoid, "unwarranted sentencing disparities among defendants who have been found guilty of similar criminal conduct."

Why are we departing from the fairness embodied in that Act? Ordinarily, criminal law does not concern itself with motive, but rather with intent.

This legislation forces law enforcement officials to comb the offender's past to determine whether the offender ever expressed hostility toward a protected group. In addition, the bill raises the real possibility that religious leaders or members of religious groups could become the subject of a criminal investigation focusing on a suspect's religious beliefs, membership and religious organizations and any past statements made by a suspect. A chilling effect on religious leaders and others who, press their constitutionally protected beliefs, unfortunately, could result.

Some of my colleagues on the other side will claim that an amendment adopted during committee markup protects religious speech. However, it would not diminish the chilling effect of possible involvement in criminal investigations. Religious speakers and groups will feel in greater jeopardy as a result of this bill.

The facts of the Supreme Court decision in *Wisconsin v. Mitchell* underscore the danger of this legislation. In that case, Todd Mitchell received an enhanced hate crime sentence because of remarks he made to prior to others attacking a teenager because of his race. Mitchell did not participate in the physical assault of the teenager. His sentence was upheld. He was punished for his words.

My colleagues on the other side have argued that no prosecutor would ever subject members of a religious community to the criminal process. Are we willing to take the risk and leave the first amendment protections to a prosecutor's discretion?

I also believe the bill itself is probably unconstitutional and will likely be struck down by the courts. There is little evidence to support the claim that hate crimes impact interstate or foreign commerce, an important consideration for any Federal court reviewing the constitutionality of this legislation.

In 2000, the Supreme Court in the *United States v. Morrison* struck down a prohibition on gender-motivated violence. In that case, the court specifically warned Congress that the commerce clause does not apply to non-economic violent criminal conduct that does not cross State lines, nor does the proposed legislation authorized under the 14th and 15th amendments. Those amendments only extend to State action and do not cover the actions of private persons who commit violent crimes.

While the 13th amendment reaches private conduct such as individual criminal conduct, it is difficult to argue that one's sexual orientation, disability or gender identity constitutes a badge and incidence of slavery. Aside from the constitutional defects of this bill, it purports to federalize crimes that are being effectively prosecuted by our States and local governments.

FBI statistics show that the incidence of so-called hate crimes has actually declined over the last 10 years. Only six of approximately 15,000 homicides in the Nation involved hate crimes.

As the Washington Post stated in a previous editorial, "Rape, murder and assault—no matter what prejudice motivates the perpetrator—are presumptively local matters in which the Federal Government should intervene only when it has a pressing interest. The fact that hatred lurks behind a violent incident is not, in our view, an adequate Federal interest . . ."

Unfortunately we cannot legislate away the hatred that some feel in their

hearts. We need fewer labels and more unity in our country. For all the reasons I have mentioned above, I oppose the bill.

Mr. Speaker, I reserve the balance of my time.

Mr. CONYERS. Mr. Speaker, I am pleased to yield 2 minutes to a distinguished member of the committee, TAMMY BALDWIN of Wisconsin.

Ms. BALDWIN. Mr. Speaker, the House today has a historic opportunity to expand upon the principles of equal rights and equal protection embodied in our Constitution by passing the Local Law Enforcement Hate Crimes Prevention Act.

This Act would offer Federal protections for victims of hate crimes targeted because of their race, color, religion, national origin, sexual orientation, gender, gender identity or disability. These characteristics are included in this hate crimes legislation, not because they deserve any special protection as opponents of this legislation claim, but because of the history of particularly heinous and violent crimes committed against individuals based on such characteristics. That's what warrants this inclusion.

I wanted to share several stories about why this legislation is so important. I only have time for one. Let us never forget the story of Matthew Shepard, who was brutally attacked by his hateful, homophobic assailants and left to die on a fence in a remote area of Wyoming.

Matthew's death generated international outrage by exposing the violent nature of hate crimes and its horrific effect on the entire targeted community. The sponsors of the Senate hate crimes legislation have renamed the bill the Matthew Shepard Act. Today we have been joined by Matthew's mother, Judy Shepard and a lead investigator in this case, David O'Malley, who are still courageously advocating for the passage of this legislation more than 8 years after Matthew's death.

The passage of hate crimes legislation is long overdue. This will be critical for both symbolic and substantive reasons. The legal protections are essential to our system of ordered justice and essential for ensuring that those who commit heinous crimes are punished. But on a symbolic basis, it is important for Congress to enunciate clearly that hate-based violence targeting women, gays, lesbians, transgender individuals and people with disabilities will no longer be tolerated.

Mr. Speaker, I want to thank Chairman CONYERS, Chairman SCOTT, and the staff of the Judiciary Committee for their diligent work in bringing the bill to the floor.

Hate crimes are different than other violent crimes because they seek to instill fear into a whole community—be it burning a cross in someone's yard, the burning of a synagogue, or a rash of aggravated batteries of people outside a gay community center. These are crimes motivated by prejudice and meant to send a message to society and others who